HR, employment law and your business

A guide for employers, business owners and managers from Lawrite
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Introduction

Knowing about your employment law obligations to your workforce and the HR policies and procedures you should be operating within your business is not merely about compliance or the dangers of ending up in the Employment Tribunal.

Thousands of hours of management time worth millions of pounds to the UK economy every year is spent dealing with employment and HR disputes.

Many of those disputes could have been avoided if business owners and their managers were aware of the basics of employment law and how it impacts on the way they can deal with people who work for them, and if proper written HR policies and procedures were put in place.

Making sure your workforce is treated lawfully and fairly in a workplace where there are clearly communicated HR policies and procedures will result in greater efficiency and productivity.

This guide runs through the different areas of employing people that are affected by the law and what you should be doing to comply.

The guide is divided into sections covering employment law obligations and HR good practice relating to:

- Recruitment;
- Terms and conditions of employment;
- Wages, equal pay, and sick pay;
- Working hours, breaks and annual leave;
- Fixed-term and part-time work;
- Discipline and grievance procedures, dismissals and redundancy;
- Equality and discrimination;
- Time off work;
- Right to apply for flexible working;
- Working parents’ rights;
- Health and safety;
- Employer’s liability insurance;
- Pensions;
- Data protection.

Check list - how good is your business?

There is a check list for employers in the next section.
Recruitment

Unless you are fully aware of the Equality Act and the importance of not discriminating during the recruitment process, it will be fraught with hidden dangers from the moment you compose your job advertisement.

It is unlawful to discriminate during the recruitment process on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, or membership (or non-membership) of a trade union.

Employers must not ask questions about health or disability during the recruitment process until a job offer has been made, except in certain specific cases.

However, employers must be prepared to make “reasonable adjustments” to accommodate people with disabilities during recruitment.

Job applicants may be able to make a claim against you to an Employment Tribunal, even though they have not worked for you, if they believe they weren’t selected for a particular job during the recruitment process as a result of discrimination.

Entitlement to work in the UK

It is important for employers to make stringent checks that potential employees are entitled to work in the UK.

Employers can face the imposition of civil penalties of up to £20,000 per illegal worker, as well as any fines or imprisonment resulting from prosecution.
Terms and conditions

Employees are entitled by law to receive a written statement of their terms and conditions of employment within two months of starting work.

The written summary must include terms covering the matters below:

- The identity of the employee;
- The title of the employee’s job and brief description of his or her work;
- The place where the employee is to work;
- The date the employment began;
- The dates any continuous employment began;
- The rate of pay and intervals when payment takes place;
- The hours of work;
- Entitlement to holidays including public holidays and holiday pay;
- What happens if the employee is sick or injured or otherwise incapable of work and whether he will receive sick pay and if so on what terms;
- Details of the Pension Scheme;
- Notice to be given and received;
- If employment is temporary, the expected period of employment;
- The termination date if employment is for a fixed term;
- Any collective agreements applicable to the employment;
- Whether the employee is expected to work outside the UK for more than one month and if so length of period, currency of pay, benefits and terms relating to return to UK;
- Specify any procedure applicable to the taking of disciplinary decisions relating to the employee or to a decision to dismiss the employee or referring the employee to the provisions of a document specifying such a procedure which is reasonably accessible to the employee;
- Specify a person (either the name of the person or their job title/position) to whom the employee can apply if unhappy with any disciplinary action or dismissal decision taken against him or her;
- Specify a person (either the name of the person or their job title/position) to whom the employee can apply to seek redress of any grievance relating to his employment.

The statement must accurately represent the terms as they were seven days prior to the date of the statement.

However the statement is not a written contract, and since there are many areas outside the statutory list of terms which it is good practice to define in writing, most employment lawyers advise employers to provide proper written contracts from the outset to avoid disputes or potential Employment Tribunal claims later.
For example, most deductions from pay will be unlawful unless the employee has given prior written consent, which can be done by way of a suitably worded clause in a written contract of employment.

A properly-drafted contract of employment can define what is expected of the employee in many other areas of the employment relationship including conduct at work, qualifications and training, business protection (what happens if the employee goes to work for one of your competitors), care of uniforms, work clothing and equipment, use of company vehicles, use of email and the internet at work, smoking, drugs and alcohol at work, bribery and corruption, etc.

**Notice periods**

Unless an employee is contracted to work for only a specific fixed period of time or their contract provides other circumstances that automatically end it, their employment can usually only be terminated by either party giving a period of notice.

The contract can set out how much notice either party needs to give but the employer must give the employee at least the statutory minimum period of notice which is one week, until there have been two completed years of continuous employment, after which it is one week for every completed year of employment up to a maximum of 12 weeks’ notice.

This rule applies to employees who have been employed for more than a month.

An employee only has to give a week’s notice, after a month of employment, irrespective of how long he or she has been employed unless there is an express contractual term that requires them to give a different notice period.
Wages, equal pay, and sick pay

National Minimum Wage

Employees must receive at least the National Minimum Wage and are legally entitled to an itemised pay statement at or before the time of payment.

HM Revenue and Customs officers have the right to carry out checks to see if the National Minimum Wage is being paid at any time and ask to see payment records.

They can also investigate employers, following a worker’s complaint to them.

If it is found that an employer has not been paying the correct rates, any arrears have to be paid back immediately. There will also be a financial penalty to pay (the maximum is £20,000).

It is the employer’s responsibility to keep records proving that they are paying the National Minimum Wage.

Equal pay

Men and women must receive equal pay for work that is alike, work rated as the equivalent and work that is of equal value.

Statutory sick pay

All qualifying employees must receive statutory sick pay from the fourth day of incapacity.
Working hours, breaks and annual leave

The main provisions of the Working Time Regulations are:

The 48 hour week

There is a limit on average weekly working time to 48 hours. Individual workers can choose to agree to work more than the 48-hour average weekly limit, but the agreement has to be in writing and it must allow the worker to end it. An agreement can have a notice period of up to three months, but if no notice period is specified, only seven days’ written notice will be required. The agreement may be included in the written contract of employment or form a separate written agreement.

Night workers

There is a limit on night workers’ average normal daily working time to eight hours, and there is a requirement for employers to offer health assessments to night workers.

Rest periods

There are minimum daily and weekly rest periods of 11 hours rest a day and a right to a day off a week. There must be rest breaks at work of at least 20 minutes if the working day is longer than six hours.

Annual leave

In the UK there is a right to 5.6 weeks of paid annual leave capped at 28 days.
**Fixed term and part time work**

Employers must not treat part-time or fixed-term workers differently from comparable full-time workers in key areas including pay rates.

You must not treat part-time workers less favourably than comparable full-time workers. For example, they should get the same hourly rates of pay, the same leave entitlements in proportion to the number of days they work each week, the same entitlement to parental leave, and the same access to promotion opportunities.

Any treatment that puts part-time workers at a disadvantage could risk a complaint to an Employment Tribunal, or it could lead to a claim of indirect sex discrimination as the majority of part-time employees are women.

Fixed term workers must receive the same pay and conditions, the same or equivalent benefits package and pension scheme, and the same opportunities to apply for vacancies for permanent posts as permanent employees.
Disciplinary and grievance procedures and dismissals

All employees with more than two years’ service are protected by law from unfair dismissal and will have the right to make a claim to an Employment Tribunal for reinstatement or compensation if they believe they have been unfairly dismissed.

There are also many dismissals which will be legally regarded as automatically unfair with no qualifying period required to claim.

Employment Tribunals can award compensation for unfair dismissal up to a statutory limit, set by the Government. From 2013 a cap was imposed to limit compensation awards to a year’s pay or the statutory limit, whichever is the lower.

Employers are statutorily required in the written statement of terms and conditions of employment to specify, by description or otherwise, a person to whom the employee can apply if they have a grievance and they are also required by statute to allow a worker to be accompanied at certain grievance hearings.

Similarly the statement must specify any disciplinary rules applicable to employees and indicate the person to whom they should apply if they are dissatisfied with any disciplinary decision.

The statement should explain any further steps that exist in any procedure for dealing with disciplinary decisions. The employer may satisfy certain of these requirements by referring the employees to a reasonably accessible document which provides the necessary information.

There is an ACAS Code of Practice which all employers should follow when taking disciplinary action against their employees, or when dealing with grievances raised by employees.

Sensible employers will also have a performance review procedure to use when dealing with employees when issues are caused by poor performance at work which is not necessarily a disciplinary issue.

Redundancy is also a dismissal and a dismissal can only be a true redundancy in certain specific circumstances, when some staff will qualify for redundancy payments.

When going through a redundancy process it is important to take certain issues into account to avoid unfair dismissal claims.
Equality and discrimination

It is unlawful to discriminate against anyone at work because of their:

- Age;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex;
- Sexual orientation.

It is also unlawful to discriminate against anyone because of their membership (or non-membership) of a trade union.

Discrimination in the workplace can also apply to workers who may not be employees – people who carry out work, even though they may not be employees under a contract of employment, such as contract workers or partners in a firm.

Employers can be held responsible for the actions of their employees towards other employees.

Employers have a duty to make reasonable adjustments to accommodate people with disabilities in employment.

The duty to make reasonable adjustments aims to make sure that a disabled person has the same access to everything that is involved in getting and doing a job as a non-disabled person, as far as is reasonable.

When the duty arises, the employer is under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled worker or job applicant faces.

The employer is not required to do more than what is reasonable, and what is reasonable to do can depend, among other factors, on the size and nature of their organisation.

But if, however, they do nothing, and a disabled person can show that there were barriers that they should have identified and reasonable adjustments they could have made, a claim may be made in the Employment Tribunal, and the business may be ordered to pay compensation as well as make the reasonable adjustments.
Employers must not ask questions about health or disability during the recruitment process until a job offer has been made, except in certain specific cases.

Employees or job applicants who believe they have been discriminated against at work or during the recruitment process can make a claim to an Employment Tribunal.

There is no qualifying period to be able to make a discrimination claim.

There is no limit on the amount of compensation Employment Tribunals can award in discrimination cases.
Time off work

Employers must give employees time off work, other than annual leave, in certain circumstances. Whether it is paid or unpaid depends on the circumstances.

These include ante-natal appointments, trade union duties, accompanying another worker to a disciplinary or grievance hearing, and time off for “public duties”.

Pregnant women are entitled to paid time off for ante-natal care. The father of the unborn baby and partners of pregnant women have the right to take unpaid time off work to accompany expectant mothers to up to two ante-natal appointments.

Adopters have a right to a certain amount of time off work for adoption appointments before a child is placed with them for adoption.

Time off for emergencies involving dependants

All employees have the right to take a reasonable period of time off work to deal with an emergency involving a dependant, and not to be dismissed or victimised for doing so. The right enables employees to deal with an unexpected or sudden problem and make any necessary longer-term arrangements.
Right to apply for flexible working

Employees who qualify by having 26 weeks continuous employment with their employer have a right to apply to vary their contract of employment to allow flexible working.

Their employer must consider that application and may only refuse it where the employer considers that specified grounds apply.

A qualifying employee may apply to their employer for a change in his or her contract of employment so long as the change relates to:

- the hours he or she is required to work, or
- the times when he or she is required to work, or
- where he or she is required to work (as between his or her home and his or her employer’s place of business).

Only one application may be made in 12 months and it must be in writing.

After an application is made the employer has a duty to deal with it in a reasonable manner and inform the applicant of the decision within three months.

The employer can refuse the application if it is considered that one or more of the following grounds apply:

1. the burden of additional costs,
2. detrimental effect on ability to meet customer demand,
3. inability to re-organise work among existing staff,
4. inability to recruit additional staff,
5. detrimental impact on quality,
6. detrimental impact on performance,
7. insufficiency of work during the periods the employee proposes to work,
8. planned structural changes.

If the employer has failed to deal with the application or the employee considers that the employer has decided the application on incorrect facts then the employee can complain to an Employment Tribunal who may order the employer to reconsider the application or award compensation up to eight weeks’ pay (limited to the same statutory amount as a week’s pay for redundancy and unfair dismissal compensation).
Working parents’ rights

Maternity leave

All pregnant employees and mothers of babies, regardless of length of service or the hours they work, are entitled to paid time off for ante-natal care and 52 weeks’ maternity leave — made up of 26 weeks’ Ordinary Maternity Leave and 26 weeks’ Additional Maternity Leave. A woman on Ordinary Maternity Leave retains all her normal terms and conditions except wages and salary and a right to return to the same job. After Additional Maternity Leave, an employee is entitled to return to the same job unless this is not reasonably practicable.

Paternity leave

Fathers who have 26 weeks’ service by the 15th week before the expected week of childbirth are entitled to two weeks’ paid paternity leave at or around the date the child is born.

Adoption leave

Where a child is adopted, one member of a couple is entitled to receive Statutory Adoption Leave and the other Statutory Paternity Leave if they have 26 weeks’ service by the time the adopter is told they have been matched with a child for adoption. Qualifying employees are entitled to 39 weeks of Statutory Adoption Pay and two weeks of Statutory Paternity Pay.

Shared parental leave

Qualifying new parents have the opportunity to share the balance of the mother’s 52 weeks of statutory leave and 39 weeks of statutory pay as shared parental leave and shared parental pay, after the mother opts to end her maternity leave and pay early.

Shared parental leave and pay came into effect for babies due, or placed for adoption, on or after April 5th 2015.

Shared parental leave can be taken at any time in the first year following the child’s birth or placement for adoption.

The pattern of leave must be agreed between the employer and employee, with eight weeks’ notice required.

Shared parental leave can be taken in one go, or in up to three separate blocks of leave. If their employer agrees, the employee can split a block of leave into shorter periods of at least a week.
Statutory Shared Parental Pay (SSPP) is paid at the statutory rate or 90% of an employee’s average weekly earnings, whichever is lower.

Unpaid parental leave

Employees who have completed one year’s service with you are also entitled to up to 18 weeks’ unpaid Parental Leave for each child born or adopted. They can take leave until the child’s 18th birthday.
Health and safety

The Health and Safety at Work Act 1974 provides that every employer has a duty to ensure the health and safety and well-being of all their employees. The statutory duty (under Section 2(2) of the 1974 Act) is to provide:-

- Safe plant and systems;
- Safe methods of handling, storage and transport of articles of goods;
- Provide employees with information, instruction and training;
- Ensure the place of work is safe with means of access and egress;
- Provide a safe working environment.

You should also have a health and safety policy statement, which should be in writing if you have five employees or more.

Employers must ensure their workplace meets health and safety standards.

Your responsibilities will include carrying out risk assessments, making sure your premises meet the required fire safety standards; the reporting of accidents or dangerous incidents in the workplace, and providing clean toilets and sanitation facilities and first aid facilities.

Even a low-risk workplace such as a small office should have a first-aid box and a person appointed to take charge of first-aid arrangements. Employers must provide information about first-aid arrangements to their employees.

There are many other specific health and safety regulations applying to workplaces and specific industries processes and hazards.

All workplaces must have the statutory HSE health and safety poster on display, or supply employees with an equivalent leaflet.
Employer’s liability insurance

It is a legal requirement for an employer carrying on business in Great Britain to insure with an authorised insurer against liability for bodily injury or disease sustained by their employees arising out of and in the course of their employment in Great Britain in that business.

A copy of the certificate of insurance in the specified form must be displayed at the place or places of business so that they can be easily read by every employee and the original or a copy as specified produced to the HSE on the issue of notice requiring it to be produced. Criminal penalties may arise for failure to insure or otherwise comply with the related regulations.
Pensions

The introduction of new workplace pensions implementing a framework set out in the Pensions Act 2008, which places a duty on all employers to automatically enrol their qualifying workers in a workplace pension scheme and make payments on their behalf, began in 2012.

Employers must automatically enrol workers into a workplace pension scheme if they:

- are aged between 22 and state pension age;
- earn more than £10,000 a year;
- work in the UK.

All new employers now have to enrol eligible staff into a workplace pension from day one of employment.
Data Protection (GDPR)

The General Data Protection Regulation (GDPR) was approved by the EU Parliament on 14 April 2016, with an enforcement date of 25 May 2018.

The GDPR reinforces data protection law in the EU which was originally introduced with the Data Protection Directive in 1995, which resulted in the Data Protection Act 1998 in the UK.

Under GDPR, organizations in breach of GDPR can be fined up to 4 per cent of their annual global turnover or 20 Million euros (whichever is greater). This is the maximum fine that can be imposed for the most serious infringements.

For employers, the GDPR builds on the established data protection principles and introduces some important changes in the way they should communicate data protection information to their staff, and significantly, employers will no longer be able to rely on consent as a lawful reason for processing personal data and instead will be able to rely on one of the other lawful reasons for data processing under the GDPR.

Employers should have a clear privacy notice which communicates to employees and job applicants information about the personal data they collect and process and why, how it is kept, and sets out the individual’s rights and obligations under the GDPR.
Employment law check list for employers

How good is your business or organisation at employment law compliance and HR? This is our check list for UK employers.

Recruitment

✓ You and your managers who are involved in the recruitment process are fully aware of the issues and have a clear understanding of how to compose job advertisements, make selections and conduct interviews in a manner which will not leave you open to accusations of discrimination.

✓ You use a job application form and recruitment process letters which are legally compliant, up to date and make clear your commitment to avoid discrimination during the recruitment process and allow you to identify any need to make adjustments to compensate for disabilities.

✓ You make checks to ensure candidates are eligible for employment in the UK.

Terms and conditions

✓ You issue each employee with a legally-compliant statement of terms and conditions of employment, or a written contract of employment which incorporates the statutory statement, within two months of starting employment.

✓ You issue a written contract of employment with clauses that clearly cover areas such as deductions from pay, the costs of training, care of work clothing and equipment that may be supplied, use of company vehicles or the employee’s own vehicle for work, the use of alcohol or drugs at work and any other potentially contentious areas.

✓ You also issue employees with, or allow them access to, a written staff handbook with clear employment policies and procedures.

✓ To ensure the documents you are using are legally correct, you use Lawrite templates.

✓ You subscribe to Lawrite services to receive updated documents when the law changes.

Wages, equal pay, and sick pay
✓ All workers receive at least the minimum wage and are issued with itemised pay slips. Men and women are paid equally for the same work and part-timers are paid pro-rata at the same rates as comparable full-time staff.

✓ You have a clear sick pay scheme in operation which exceeds statutory sick pay, or you only pay SSP.

**Working time, breaks and annual leave**

✓ You monitor workers’ hours to ensure you don’t ask them to work more than 48 hours a week, and if you do need people to work more than 48 hours a week you get their written consent, and all workers get at least the minimum work breaks.

✓ Your holiday pay scheme gives all workers a minimum of 28 days annual leave or pro-rata for part-time workers. All workers are aware of their entitlements in clear written policies contained in your staff handbook.

**Fixed term and part-time work**

✓ Part-time workers get the same hourly rates of pay, the same leave entitlements proportionate to the number of days they work each week, the same entitlement to parental leave, and the same access to promotion opportunities.

✓ Fixed term workers receive the same pay and conditions, the same or equivalent benefits package and pension scheme, and the same opportunities to apply for vacancies for permanent posts as permanent employees.

✓ All part-time and fixed-term workers are aware of their entitlements in clear written policies contained in your staff handbook.

✓ Even if you don’t currently employ part-timers, or any with comparable full-time posts, or fixed term workers, or any with comparable posts, you are fully aware of the issues.

**Disciplinary and grievances, dismissals and redundancy**

✓ You and your managers are fully aware of the unfair dismissal laws and the need to follow proper procedures when dealing with staff disciplinary and grievance issues dismissals and redundancies.
✓ You have written disciplinary and grievance procedures which are issued to employees and followed when dealing with situations that arise.

✓ You have access to advice from qualified employment lawyers or HR specialists about disciplinary issues and dismissals or resolving grievances.

✓ You have a written performance review procedure which is used by managers where appropriate.

✓ You have a written redundancy policy and procedure.

Equality and discrimination

✓ You and your managers who deal with staff are fully aware of your legal responsibilities over equality and unlawful discrimination issues in the workplace.

✓ You have full written equal opportunities and equality policies which are distributed to your employees in a staff handbook.

✓ You and your managers are alert to signs of unlawful discrimination or bullying by workers to other workers and of the action that should be taken to stop or prevent it happening.

Time off work

✓ You are fully aware of the right to time off for family and dependants and have a clear written policy in your staff handbook.

✓ You are also fully aware of other circumstances in which employees have a right to take leave from work including ante natal appointments, trade union duties, accompanying another worker to a disciplinary or grievance hearing and time off for “public duties” and you have a clear written policy in place so that employees know their rights and the procedure to follow to keep you informed.

Right to apply for flexible working

✓ You are aware of the right to request flexible working arrangements and the limited grounds on which you can lawfully refuse such an application. You have a flexible working policy in your staff handbook so that employees are aware if the right to request flexible working and the procedure to follow.
Working parents

✓ You are fully aware of the rights and entitlements of working parents.

✓ You have clear written policies in your staff handbook to cover Parental Leave, Maternity Leave, Paternity Leave, Adoption Leave and Shared Parental Leave.

Health and safety

✓ You are fully aware of the relevant health and safety standards that affect your business and your responsibilities under the law.

✓ You have a written health and safety policy (if you have more than five employees) which is accessible to your employees or in your staff handbook.

✓ You have carried out risk assessments in your workplace, which you update when appropriate.

How did you do?

If you are doing everything listed above, you are on top of employment law compliance and good HR practices.

If not, you need our help – see the next section for more information about Lawrite fixed-cost subscription services for employers.
Lawrite services for employers

Most people running or managing a small or medium-sized business cannot justify the cost of employing an HR or legal manager, but using Lawrite services allows employers to have the benefits of an HR and legal department for a low fixed annual fee.

You get the legal and HR support and documents needed to deal with employment law, HR and health and safety law obligations.

Our customers include a wide variety of businesses and organisations including hotels and restaurants, employment agencies, estate agents, schools, care homes and charities.

Lawrite services are used by many in-house HR professionals to ensure they have up to date employment law document templates - including contracts of employment and employee handbooks with essential HR policies and procedures - and detailed law guides to work with, and access to telephone legal advice from employment lawyers when it is required.

Lawrite fixed-cost subscriptions also include a detailed guide to health and safety law, and templates for documents and forms to use to produce a health and safety policy, statutory health and safety statement and risk assessments.

Find out more and buy Lawrite subscriptions at the Lawrite Lawshop:


Lawrite, Longcroft House, 2-8 Victoria Avenue, London, EC2M 4NS

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